IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 31ST JULY 2007 / 9TH SRAVANA 1929

Bail Appl..No. 4626 of 2007()

CC NO.812/2001 OF JFCM, KOLENCHERY

PETITIONER/ACCUSED:

IBRAHIMKUTTY, AGED 43 YEARS,
S/O PAREEDKUNJU, DRIVER, K.S.R.T.C.,
PATTAMMAVUDI HOUSE, WEST PUNNAMATTAMKARA,
ENANALLOOR VILLAGE, MUVATTUPUZHA TALUK.

BY ADV. SRI.SIRAJ KAROLY

RESPONDENT/COMPLAINANT

THE STATE OF KERALA, REP. BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. S.U. NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 31/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.4626 of 2007

Dated this the 31st day of July, 2007

ORDER

The petitioner faces allegations under Section 304 A I.P.C. He was on bail. But at later stages, the petitioner could not appear in person he having allegedly secured employment abroad. The case has now been transferred to the list of Long Pending Cases. A warrant of arrest has been issued by the learned Magistrate against the petitioner.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. His absence was not wilful and was on account of reasons beyond his control. He is willing to appear before the learned Magistrate and seek regular bail. He will co-operate with the court for the expeditious disposal of the case. He is willing to surrender his passport also. But he apprehends that his application for regular bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. The petitioner, in these circumstances, has come before this Court for issue of appropriate directions under Section 438 and/or 482 Cr.P.C in his favour.

3. After the decision in **Bharat Chaudhary v. State of Bihar** [A.I.R 2003 S.C 4662], it is well settled that powers under Section 438

Cr.P.C can be invoked even in favour of an accused who apprehends arrest in execution of a non bailable warrant issued in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist to justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. I do not find any such reasons in this case justifying or warranting the invocation of the discretion under Section 438 Cr.P.C or the inherent jurisdiction under Section 482 Cr.P.C.

4. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider such application on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police [**2003(1) KLT 339].

5. This application is, in these circumstances, dismissed. But with the specific observation that if the petitioners appear before the learned Magistrate and apply for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must

proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself.

6. Hand over a copy of this order to the learned counsel for the petitioners.

(R.BASANT, JUDGE)

rtr/-